

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

CHARLES D. J. BARNES,

Plaintiff,

vs.

No. CV 19-00536 MV/KRS

UNITED STATES DISTRICT COURT,  
NEW MEXICO CORRECTIONAL FACILITY,  
EDDY COUNTY DETENTION CENTER,  
PNM,

Defendants.

**MEMORANDUM OPINION AND ORDER OF DISMISSAL**

THIS MATTER is before the Court *sua sponte* under Rule 41(b) of the Federal Rules of Civil Procedure on the Complaint for Violation of Civil Rights filed by Plaintiff Charles D. J. Barnes (Doc. 1). The Court will dismiss the Complaint without prejudice for failure to comply with Court orders, statutes, and rules, and for failure to prosecute this proceeding.

Plaintiff filed his Complaint for Violation of Civil Rights on June 7, 2019. (Doc. 1). Plaintiff did not pay the filing fee or submit an application to proceed *in forma pauperis* at the time that he filed the Complaint. The Court entered an Order to Cure Deficiency on June 19, 2019, directing Plaintiff Barnes to either pay the filing fee or submit an application to proceed under 28 U.S.C. § 1915 within thirty days of entry of the Order. (Doc. 2). With the Order to Cure, the Court also provided Plaintiff with a form Application to Proceed in District Court Without Prepayment of Fees or Costs. (Doc. 2 at 2). The Order advised Plaintiff that, if he failed to cure the deficiency within the 30-day time period, the Court could dismiss this proceeding without further notice. (Doc. 2 at 1).

Plaintiff Barnes did not comply with the Court's June 19, 2019 Order. Instead, on July 15, 2019, Plaintiff submitted a Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees (PLRA Form), rather than submitting the § 1915 Application supplied by the Court. (See Doc. 8). Subsequently, on July 29, August 1, and August 2, 2019, Plaintiff sent the Court three letters stating that they included \$40 partial payments for the filing fee. (Doc. 10, 11, 13). However, no payment was included with any of the three letters.

More than 30 days elapsed after entry of the Court's Order to Cure Deficiency and Plaintiff did not pay the \$400 filing fee, submit an application to proceed under § 1915 in proper form, or otherwise respond to the concerns raised in the Court's June 19, 2019 Order. On September 4, 2019, the Court entered an Order to Show Cause, directing Plaintiff to show cause why his Complaint should not be dismissed for failure to comply with the Court's June 19, 2019 Order. (Doc. 14). The Court also took notice that Plaintiff previously had a prisoner civil rights case dismissed for failing to pay the filing fee, submit an application to proceed under § 1915, or otherwise comply with the Court's orders. *See Barnes v. State of New Mexico*, No. CV 18-01059 RB/LF.

Plaintiff Barnes, again, did not respond to the matters raised in the Court's September 4, 2019 Order to Show Cause. Instead, Barnes filed a Notification to authorities, Motion for evidentiary hearing, and notice of exhibits (Doc. 15, 16, 17). All of these documents are directed to the merits of his alleged claims but fail to address the issue of his failure to pay the filing fee, submit an application to proceed in proper form, or comply with the Court's prior orders.

Under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required to collect the filing fee from the Plaintiff or authorize Plaintiff to proceed without prepayment of the fee. Plaintiff has failed to either pay the \$400.00 filing fee or submit an application to proceed under § 1915 in proper form.


The Court may dismiss a proceeding under Rule 41(b) for failure to comply with statutes or rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003). The Court will dismiss this civil proceeding pursuant to Rule 41(b) for failure to comply with 28 U.S.C. §§ 1914, 1915, failure to comply with the Court's Orders of June 19, 2019 and September 4, 2019, and failure to prosecute this proceeding. As a result of the Court's decision to dismiss this case, Plaintiff's remaining motions, namely his Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees (PLRA Form) (Doc. 8) and his Motion for Evidentiary Hearing (Doc. 16) are moot.

**IT IS THEREFORE ORDERED that:**

(1) the Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fess (PLRA Form) filed by Plaintiff Charles D. J. Barnes on July 15, 2019 (Doc. 8) is **FOUND AS MOOT**;

(2) the Motion for evidentiary hearing filed by Plaintiff Barnes on September 26, 2019 (Doc. 16) is **FOUND AS MOOT**; and

(2) the Complaint for Violation of Civil Rights Complaint filed by Plaintiff Charles D.J. Barnes on June 7, 2019 (Doc. 1) is **DISMISSED** without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute or to comply with 28 U.S.C. §§ 1914 and 1915 and with the Court's June 19, 2019 and September 4, 2019 Orders.

  
UNITED STATES DISTRICT JUDGE